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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

16-MISC-461 (PAE)

5 JAMES ROSS MELLON II and
6 VIVIAN RUESCH,

7 Defendants.
8 -----x

New York, N.Y.
9 February 8, 2017
10 12:00 p.m.

11 Before:

12 HON. PAUL A. ENGELMAYER

13 District Judge

14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
Southern District of New York

17 BY: JACOB T. LILLYWHITE,
18 LARRY FOGELMAN, ESQ.

Assistant United States Attorneys

19 FRANK AGOSTINO, ESQ.

20 JAIRO CANO, ESQ.

Attorneys for Defendants

21 Also Present: Rachel Samuels

22 Intern, U.S. Attorney's Office

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(In open court)

THE CLERK: In the matter of United States v. Mellon II, et al., 16 Misc. 461, counsel please state your appearance for the record.

MR. LILLYWHITE: Jacob Lillywhite on behalf of the United States.

MR. FOGELMAN: Good morning. Larry Fogelman, also on behalf of the United States.

THE COURT: Also good morning to you.

MS. SAMUELS: Rachel Samuels, intern.

THE COURT: Good morning to you as well.

MR. AGOSTINO: Good morning, your Honor. Frank Agostino for the Mellons.

THE COURT: For Mr. Mellon as well as Ms. Ruesch?

MR. AGOSTINO: Ruesch, yes.

THE COURT: And you are joined by?

MR. CANO: Jairo Cano. I'm with Agostino & Associates, also for Mr. Mellon and Mrs. Ruesch. I do want to note, I don't have a formal entry of appearance in the record.

THE COURT: That's noted. OK.

Welcome to all of you. You may be seated.

Counsel, I have read everyone's very thoughtful and helpful submissions. I have a discrete question or two for you, but I'm basically prepared to rule. So I don't invite argument unless there is something that somebody wants to add.

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1 Let me begin with the government table. Was there
2 anything at the government table that you want to put on the
3 record?

4 MR. LILLYWHITE: Not unless your Honor has any
5 questions.

6 THE COURT: I have a question or two, but independent
7 of that, is there anything you want to raise?

8 MR. LILLYWHITE: No, your Honor.

9 THE COURT: Mr. Agostino, anything from you?

10 MR. AGOSTINO: Yes. In our papers, I confused
11 "subject matter jurisdiction" and "personal jurisdiction" in
12 those captions. So with respect to 7604, it is our argument
13 that that's subject matter jurisdiction, as opposed to personal
14 jurisdiction.

15 THE COURT: No offense or contention taken.

16 MR. AGOSTINO: Then, with respect to subject matter
17 jurisdiction, our argument was that residence and then
18 residence, if there is non-residency, goes to 7701, which is
19 then district upcoming. Then personal jurisdiction is 7603,
20 right. And that's the service of issue once the Court has
21 subject matter jurisdiction. Right. My moving papers
22 conflated the two.

23 THE COURT: No harm. But thank you. I appreciate the
24 clarification.

25 MR. AGOSTINO: So those are our arguments.

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1 On Mr. Mellon, the argument is simply that the Court
2 lacks subject matter jurisdiction, it lacks personal
3 jurisdiction, and that just as a practical matter, having
4 someone travel from Switzerland to New York to answer when
5 there is the procedure of serving the consulate and having him
6 report in Switzerland to be questioned is the more appropriate
7 way.

8 For Ms. Ruesch, there is, again, two pieces. One, on
9 the document part of the statute, we think we comply. We
10 brought to the Court the documents that -- we provided, we
11 redacted the bank statements and financial statements to take
12 out the notes that she gave us to decide which columns they go
13 into on their response. So we Bates-stamped all the response.
14 We brought into court and we have for in camera submission the
15 bank statement with her handwritten notations.

16 THE COURT: That's not necessary. Let me just focus
17 on the documents. Government, just briefly, can you rattle off
18 the species of documents which are called for which have not
19 been, in your view, produced.

20 MR. LILLYWHITE: Yes, your Honor. So I believe there
21 are two broad categories. One, as to all of the document
22 requests, there seems to be a distinction that Ms. Ruesch is
23 drawing between documents in her possession and documents in
24 her custody and control. And she has stated that she has
25 produced for all document requests, I believe, except for 5 and

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1 7, the documents in her possession, but argues that it would be
2 inappropriate to require that she produce documents in her
3 custody or control, although she admits that under the IRS
4 summons power, the IRS is certainly entitled to get those
5 documents, but she thinks that there's a broad privilege issue
6 there.

7 THE COURT: Right.

8 MR. LILLYWHITE: And then there are specific issues
9 that she raises as to document requests 5 and 7.

10 THE COURT: Right. In sort of a more concrete way,
11 what species of document do you have reason to believe that she
12 has possession, custody, or control over that has not been
13 produced?

14 MR. LILLYWHITE: For example, your Honor, there may
15 well be documents, whether formation documents or other
16 documents associated with foreign entities that the IRS has
17 reason to believe she was associated with, that she has not
18 produced. There may certainly be additional account statements
19 that she doesn't presently have in her possession or didn't
20 have at the time she produced that she has in her custody or
21 control. And there may well be other sorts of records,
22 including travel records, that, although she doesn't have in
23 her possession, she has custody of.

24 THE COURT: I suppose after she is questioned under
25 oath, you may have a more sharp understanding of what there is

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1 out there that is within her possession custody or control.

2 MR. LILLYWHITE: I understand.

3 THE COURT: Mr. Agostino, is there anything further
4 that you want to add? I've read your papers, so no need to
5 retread the ground that's covered, and you covered it well. I
6 just want to understand if there's anything more.

7 MR. AGOSTINO: She said she's got everything in her
8 possession, custody, or control turned over, that she doesn't
9 have to ask her husband what he has that may be responsive to
10 her summons. She has affirmatively said --

11 THE COURT: Are they married?

12 MR. AGOSTINO: They are still married. They don't
13 live together, but they are still married.

14 THE COURT: Do they ever have contact with one
15 another?

16 MR. AGOSTINO: Yes, they do.

17 THE COURT: Are they approaching separation or
18 divorce?

19 MR. AGOSTINO: They live interesting separate lives.
20 I don't think that we would call it separation or divorce. I
21 think it's something --

22 THE COURT: They just don't spend all their time
23 together.

24 MR. AGOSTINO: Yes.

25 THE COURT: All right. Look, Ms. Ruesch, anything --

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1 excuse me. Mr. Agostino, anything further about Ms. Ruesch?

2 MR. AGOSTINO: No, your Honor, other than the in
3 camera review.

4 THE COURT: Right. I don't think that is necessary.

5 May I ask you, just, Mr. Ruesch -- I'm sorry. I
6 keep -- I've written down "Ruesch" because I was going to
7 pronounce Ms. Ruesch's name differently, as "rush." Forgive
8 me.

9 Mr. Agostino, is it really the case that your clients
10 haven't paid federal taxes in a long time? When did they last
11 pay them?

12 MR. AGOSTINO: We need to separate Mr. Mellon and
13 Mrs. Ruesch, your Honor. Mr. Mellon renounced his citizenship
14 in 1977. He is neither a citizen nor resident of the United
15 States. It is our position that he is not subject to United
16 States taxation. He does not spend --

17 THE COURT: Because of his lack of citizenship?

18 MR. AGOSTINO: He's not a citizen. He is not a
19 resident. He's not a domiciliary. United States citizenship
20 can be renounced. The United States can't tax everyone in the
21 world. There needs to be domicile or citizenship. If you read
22 down FACTA, there are 3,000 United States persons that have
23 either renounced their citizenship or given up their Green
24 Cards.

25 THE COURT: For somebody in that situation, what, as

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1 you understand it, is the dispositive factual degree as to
2 whether or not they are obliged to pay income taxes?
3 Renunciation of citizenship isn't an automatic shield against a
4 tax obligation. There is a factual inquiry. What is it in
5 your view?

6 MR. AGOSTINO: Is there income that is effective -- I
7 would defer to the United States, obviously. But they would
8 need to demonstrate there was income that was effectively
9 connected to the United States, that there's a United States
10 business, there's a United States entity that was operating
11 that generates income that should be taxed by the United
12 States, whereas --

13 THE COURT: And Mr. Lillywhite, what in your view, if
14 it's not disputed that Mr. Ruesch is a noncitizen --

15 MR. LILLYWHITE: Mr. Mellon.

16 THE COURT: Excuse me, I'm sorry. Mr. Mellon is a
17 noncitizen. What in your view is the operative test that will
18 determine whether or not he has tax obligations?

19 MR. LILLYWHITE: Your Honor, under 26 U.S.C. § 7701
20 there is a substantial presence test, and if someone meets the
21 substantial presence test by spending a sufficient amount of
22 time in the United States, and I believe it looks to a tax year
23 and they also look to a year prior and the year forward, then
24 they are qualified as a resident alien for purposes of the tax
25 code.

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1 THE COURT: And so part of the factual inquiry that
2 you are proposing to undertake, both in testimony and of a
3 documentary nature, is to test both the proposition that he is
4 within the scope of the tax laws, applying that standard, as
5 well as, if he is, what the tax math is.

6 MR. LILLYWHITE: That's right, your Honor.

7 THE COURT: OK. And, Mr. Agostino, you were going to
8 give me a different inquiry for Ms. Ruesch.

9 MR. AGOSTINO: Well, Ms. Ruesch has filed her tax
10 returns. Again, husband and wife file separately, right. They
11 file separate returns. Ms. Ruesch does spend enough time in
12 the United States to be required to file a return. So the
13 Internal Revenue Service made the determination. They prepared
14 substitutes for return. We reviewed the substitutes for
15 return, filed the returns, paid the tax, and had that
16 examination. So we believe, with respect to Ms. Ruesch, she
17 has complied. There was an examination.

18 THE COURT: I see.

19 MR. AGOSTINO: As they admit, the only reason they're
20 really looking at Ms. Ruesch now is because she's married to
21 Mr. Mellon and travels with him and suggests that there may be
22 unreported income. And that's what we argued. That's exactly
23 what Congress prohibited them from doing in 7602(e). You don't
24 begin examinations and investigations of people just based on
25 financial status or, what they say, economic reality. The mere

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1 fact that someone is married to someone that's wealthy does not
2 mean that they in essence themselves have income, right.
3 Husbands have duties to support wives.

4 THE COURT: All right. Thank you.

5 Government, final question before I rule: You at some
6 point in your papers indicated a desire to seek attorney's
7 fees. But you are civil servants who don't bill by the hour.
8 Are you pursuing attorney's fees?

9 MR. LILLYWHITE: Your Honor, I believe there are
10 questions of costs, and in this case, given the costs that have
11 been expended, we're not seeking that at this time.

12 THE COURT: So you are renouncing the claim to fees
13 and costs.

14 MR. LILLYWHITE: Yes, your Honor.

15 THE COURT: All right. I'm going to need to rule, but
16 I have a ruling that I will read from.

17 All right. Good afternoon. This morning, the Court,
18 sitting in part I, heard brief discussion from counsel and
19 brief argument regarding the order to show cause issued by
20 Judge Failla herself sitting in part I on December 21, 2016,
21 which in turn arose out of the government's petition to compel
22 respondents to respond to an IRS summons. The Court is now
23 going to rule on the petition. For your planning purposes,
24 there will not be a written decision. I will issue a
25 bottom-line order reflecting my disposition of the motion. To

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1 the extent the Court's reasoning is significant to counsel, it
2 will be reflected on the transcript of this conference. And
3 not to be a plot spoiler, but, government, I will be seeking
4 from you, please, a proposed order that is sufficient to
5 capture the decision I am about to render, just to make sure
6 that I'm formulating the order in a way that is technically
7 responsive to the needs of the case and the ruling that I'm
8 about to make.

9 So I'm going to begin by briefly summarizing the
10 relevant facts and procedural background.

11 The case arises out of a dispute between the United
12 States government and respondents regarding a set of summons
13 issues to respondents by the IRS as part of the IRS's
14 investigation into their tax liability between the years 2005
15 and 2011.

16 On December 12, 2016, the government filed this
17 miscellaneous action in the Southern District of New York
18 against respondents James Ross Mellon II, an heir to the Mellon
19 fortune, and his wife, Vivian Ruesch, to enforce summonses
20 issued to Mellon and Ruesch by the IRS. That's Docket 1. In
21 support, the government filed a memorandum of law, Docket 2,
22 and a declaration by IRS Agent Gary Frangipane, Docket 3. On
23 December 21, 2016, Judge Failla issued an order to show cause,
24 Docket 5, directing the respondents to show cause why they had
25 failed to properly respond to the summonses. On January 13,

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1 Mellon filed a motion to dismiss this action for lack of
2 jurisdiction -- that's Docket 8 -- as well as supporting
3 memoranda of law for each respondent, which are Dockets 9 and
4 12, in addition declarations by Mr. Mellon's attorney, Frank
5 Agostino, at Docket 10 and by Ms. Ruesch at Docket 11. On
6 February 3, 2017, the government filed reply briefs -- that's
7 Dockets 15 and 18 -- and supportive declarations -- that's
8 Dockets 16 and 17. On February 6, 2017, Mellon filed a reply
9 memorandum. That's Docket 19.

10 The government asks the Court here to direct the
11 respondents to comply fully with the summonses issued to Mellon
12 on March 10, 2016 and to Ruesch on December 5, 2016. According
13 to the government, it and this Court have jurisdiction over the
14 IRS's investigation of respondents' alleged tax liabilities,
15 and therefore also to enforce the IRS summons against
16 respondents. The government further argues that respondents
17 have not given any valid justifications for failing to respond
18 fully to the summons and thus intervention by this Court is
19 necessary.

20 Respondents counter that the government's petition
21 should be dismissed by the Court, for lack of jurisdiction
22 among other reasons.

23 In the course of the colloquy today, counsel for
24 respondents also suggested that there simply may be no taxes
25 due and owing. But that's ultimately a merits issue that would

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1 be reached if at all following the completion of the
2 fact-gathering process by the IRS.

3 Turning to the discussion, the issue before the Court
4 today is whether respondents must comply with the IRS
5 summonses. The short answer, the clear and obvious answer, is,
6 yes, respondents must do so. There is no justification, none,
7 zero, for respondents to flout the summonses. The Court today
8 will issue a separate emphatic order to that effect.

9 The Court will now address the respondents' various
10 objections, starting with Mellon's and then turning to
11 Ruesch's, and explain why they lack merit.

12 First, Mellon argues that this Court lacks subject
13 matter jurisdiction over his tax controversy with the IRS.
14 That is wrong. Section 1340 of Title 28 gives federal district
15 courts jurisdiction over "any civil action arising under any
16 act of Congress providing for internal revenue." That section
17 has been held to apply to IRS summons enforcement actions, as
18 explained, for example, in two federal appellate decisions:
19 *United States v. B&D Vending, Inc.*, 398 F.3d 728, 731 (6th Cir.
20 2004), and *United States v. Saunders*, 951 F.2d 1065, 1068 (9th
21 Cir. 1991). Separately, Section 1345 of Title 28 grants
22 district courts subject matter jurisdiction over "all civil
23 actions, suits or proceedings commenced by the United States,"
24 which of course includes IRS summons enforcement suits.
25 Therefore, this Court has subject matter jurisdiction over this

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1 action.

2 Second, Mellon argues that this Court lacks personal
3 jurisdiction over him. Here, too, he is incorrect. In the
4 *Licci ex rel. Licci v. Canadian Bank, SAL*, 673 F.3d 50, 59-60
5 (2d Cir. 2012), the Second Circuit held that a court may
6 exercise personal jurisdiction over a defendant after service
7 of process on that defendant when (1) there exists "a statutory
8 basis for personal jurisdiction" and (2) the exercise of
9 personal jurisdiction would "comport with constitutional due
10 process principles."

11 In this case, as to the first element, there are
12 statutory bases for personal jurisdiction over Mellon under
13 Section 7402 and 7604 of the Internal Revenue Code. These
14 provide that "by appropriate process," the district court in
15 which the summonsed person "resides or may be found" shall gain
16 both subject matter and personal jurisdiction over an IRS
17 enforcement action. See 26 U.S.C. §§ 7402(b) and 7604(a). And
18 given the substantial evidence that Mr. Mellon resides at least
19 part time at his Fifth Avenue apartment, the Court finds that
20 Mr. Mellon "may be found" in the Southern District of New York.
21 See *United States v. Toyota Motor Corp.*, 561 F. Supp. 354, 357
22 (C.D. California 1983). Therefore, the first element under
23 *Licci* is met.

24 The second element is also met. In *Kadic v. Karadzic*,
25 70 F.3d 232, 247 (2d Cir. 1995), the Second Circuit held that

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1 with respect to a natural person, "personal service [pursuant
2 to Fed R. Civil P. 4(e)(2)] comports with the requirements of
3 due process for the assertion of personal jurisdiction." And
4 Mellon was properly served under Rule 4(e) with the order to
5 show cause and the petition to enforce the IRS summons.
6 Service was with the doorman of Mellon's Fifth Avenue apartment
7 building. That service complied with Rule 4(e). To comply
8 with the rule, a process server must "leav[e]...with someone of
9 a suitable age and discretion who resides there," "a copy of
10 [the papers] at the individual's dwelling or usual place of
11 abode." Citing Rule 4(e)(2)(B). Courts in this district have
12 repeatedly held that service on doormen or building managers
13 satisfies Rule 4(e). *See, e.g., Rana v. Islam*, 305 F.R.D. 53,
14 63 (S.D.N.Y. 2051); *Howard Johnson International, Inc. v. Wang*,
15 7 F. Supp. 2d 336, 304 (S.D.N.Y. 1998) (Chin, J.), *affirmed*,
16 181 F.3d 82 (2d Cir. 1999); *131 Main street v. Manko*, 897 F.
17 Supp. 1507, 1525 (S.D.N.Y. 1995); and *Three Crown Ltd.*
18 *Partnership v. Caxton Corp.*, 817 F. Supp. 1033, 1051 (S.D.N.Y.
19 1993). The Court here holds as well, and the Court finds that
20 the service in this case on Mellon's doorman satisfied
21 Rule 4(e).

22 Now, Mellon claims that the Fifth Avenue apartment was
23 not his primary or only dwelling. Even assuming that is so,
24 that does not change the result. The Second Circuit's decision
25 in a closely analogous case, *National Development Company v.*

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1 *Triad Holding Corp.*, 930 F.2d 253, 257 (2d Cir. 1991), is
2 persuasive if not controlling as to this claim. The person
3 served there was "a wealthy man and a frequent intercontinental
4 traveler" who maintained 12 residences around the world. The
5 Circuit held that service at the man's Fifth Avenue apartment,
6 where he spent only a minority of his time, was effective under
7 Rule 4(e)(2). As the Circuit explained, "in a highly mobile
8 and affluent society, it is unrealistic to interpret [Rule
9 4]...so that the person to be served has only one dwelling
10 house or usual place of abode at which process may be left,"
11 and "[t]his case presents a perfect example of how ineffectual
12 so wooden a rule would be." *Id.* at 257. Mellon, also a
13 part-time Fifth Avenue resident, similarly was not excused from
14 having to comply with the summons by his extreme good fortune
15 to have multiple abodes around the world. Under the Second
16 Circuit's decision in *PAA Management, Ltd. v. United States*,
17 962 F.2d 212, 216 (2d Cir. 1992), which holds that courts
18 should construe limitations on the government's summons
19 authority "liberally in favor of the IRS," Mellon's claim that
20 his Fifth Avenue apartment was not his "last and usual place of
21 abode" clearly fails.

22 I turn now to Ms. Ruesch's objections. Her first is
23 that she has in fact "complied with the requests contained in
24 the Summons re: Ruesch, [and thus] an enforcement action
25 against her with respect to the [summons] is unwarranted."

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1 That is wrong. As the government persuasively explains in
2 documents, the summons required Ruesch to appear in order to
3 provide testimony at the IRS's office in New York. She has
4 failed to do so and does not claim to have done so. The
5 subpoena also required her to produce any responsive documents
6 in her possession, custody, or control. While she certainly
7 appears to have produced some documents, the government
8 persuasively explains why her production appears short of
9 complete. Indeed, given the scope of what was actually
10 required by the summons and the comparatively insignificant
11 volume of material that Ms. Ruesch actually turned over to the
12 IRS, it is not credible for her to claim that she has in every
13 particular fully complied with the summons. I further expect
14 that, following her testimony, more insight will be gleaned
15 into the scope of responsive materials.

16 Ruesch's second objection is that, to the extent she
17 has not complied with the summons, she is protected from doing
18 so by the spousal privilege and by the Fifth Amendment
19 privilege against self-incrimination. There are compelling
20 reasons on the merits to doubt that either of these privileges
21 would protect Ruesch's as blanket matter from complying. Each
22 privilege, as the Court is well familiar, applies only under
23 narrow, defined circumstances. Neither would ordinarily permit
24 a respondent categorically to resist a lawful summons for
25 documents or testimony. But the Court need not even reach the

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1 merits question of whether either privilege applies because
2 Ruesch's invocation of privilege is quite blatantly
3 procedurally deficient.

4 To properly invoke privilege, Ruesch must gather the
5 responsive documents to the IRS summons, again, both as to
6 herself and to her husband to the extent called for. Then, to
7 the extent she contends that those documents or their
8 production would be privileged, she must produce a privilege
9 log that invokes the applicable privilege on a document-by-
10 document basis. See *United States v. Gendreau*, No. 12 Misc.
11 303 (WHP), 2014 WL 464754, at page 3 (S.D.N.Y. January 22,
12 2014). As the federal district court in Connecticut stated in
13 the 2010 case of *United States v. Whitehouse*, No. 10 Civ. 1739,
14 2010 WL 4876295, at page 3: "[T]o properly invoke the
15 privilege, the [summoned party] must comply with the summons by
16 appearing and by asserting the privilege on a document-by-
17 document basis." As lawyers and judges appreciate, the purpose
18 of the requirement of a document-by-document privilege log is
19 to crystallize the privilege issues. Such a log assures, for
20 example, that the foundational elements of the privilege are
21 met, such as, not exclusively, that the communication in
22 question was solely among persons to whom a privilege may
23 attach and did not include third parties whose presence might
24 destroy the confidentiality premise of the privilege. Upon
25 preparation of a log, the party issuing the summons can then

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1 object and, if necessary, a reviewing court can resolve,
2 document by document, the validity of the claim of privilege.
3 Thus far, however, Ruesch has not gathered those documents,
4 much less produced a privilege log that properly invokes on a
5 document-by-document basis, the asserted applicable privilege
6 or privileges.

7 Until such time as Ruesch appears and properly invokes
8 a specific privilege in response to a specific question or a
9 specific document request from the government, the Court has no
10 occasion to rule one way or the other on the merits of whether
11 or not a legal privilege might attach to any of the material
12 the government seeks to obtain or any of the questions the
13 government might put to Ms. Ruesch. There is simply no dispute
14 ripe for adjudication of a privilege claim. As a sister court
15 in the Eastern District of New York has explained, upon a
16 "blanket invocation of the privilege," and in the absence of a
17 privilege log, a dispute over privilege was "not ripe for
18 determination." See *Carver v. Nassau County Interim Financial*
19 *Authority*, 2012 WL 12266891, at page 1 (E.D.N.Y. August 9,
20 2012).

21 The Court has considered the remainder of Ms. Ruesch's
22 objections, including her claim that the summons were not
23 issued in good faith, and including her claim that the IRS had
24 actually closed its investigation into her federal tax
25 liability for the period in question. The Court finds each of

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1 those arguments substantially, indeed extremely unpersuasive.
2 The Court summarily rejects them, substantially for the reasons
3 recited in the government's brief.

4 The Court therefore will grant and does grant the
5 government's petition to enforce the summonses against both
6 Mellon and Ruesch, and directs respondents to comply forthwith
7 with those summonses.

8 Government, I will direct you to provide the Court
9 with a copy of a proposed order consisting with the oral ruling
10 today just to make sure that I have formulated the order in a
11 way that is legally effective.

12 Before we adjourn, is there anything else the parties
13 would like me to address?

14 MR. LILLYWHITE: No, your Honor. So we did submit a
15 proposed order about 10:30. We have a copy here.

16 THE COURT: Please hand it up.

17 MR. LILLYWHITE: And I did want to flag for your Honor
18 that we included in that order a requirement that all documents
19 be produced within 30 days.

20 THE COURT: Let me read this. And do you have a copy
21 for your adversary, who may have been en route when you sent
22 it?

23 MR. LILLYWHITE: No, your Honor. I don't, although I
24 e-mailed him.

25 THE COURT: All right. I will hold off for a couple

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1 of hours signing this just to give your adversary an
2 opportunity to review it. But let me just read it for a
3 moment.

4 (Pause)

5 THE COURT: The order is completely consistent with my
6 rulings here today. I intend to sign it.

7 Is there anything further -- you are still rising,
8 Mr. Lillywhite.

9 MR. LILLYWHITE: No, your Honor.

10 THE COURT: Mr. Agostino, anything further from you?

11 MR. AGOSTINO: Your Honor, I wish to file a motion for
12 a stay pending appeal. Do you want to set a deadline date for
13 that?

14 THE COURT: The motion for a stay pending appeal is
15 denied.

16 MR. AGOSTINO: Thank you.

17 THE COURT: I'm denying it from the bench.

18 MR. AGOSTINO: Thank you.

19 THE COURT: So that there will be no stay. If you
20 want to appeal, go ahead and appeal. But I'm not staying my
21 ruling.

22 MR. AGOSTINO: Thank you, your Honor.

23 THE COURT: And indeed, I will add a sentence to this
24 order that reflects, that reads as follows, in substance: "the
25 Court" --

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(Pause)

THE COURT: I will amend the order at the very end as follows: I will put a semicolon after the last word of the order which reads "requests," and I will write, "and it is further ordered that respondents motion -- made orally at the close of today's hearing -- for a stay of the effect of this order is denied."

MR. AGOSTINO: Thank you, your Honor.

THE COURT: Thank you.

We stand adjourned.

Mr. Agostino, the order that the government has provided to me is utterly consistent with the ruling, A, that it sought, and, B, that I have given. I will give you till 3 o'clock if you want to write a letter to chambers if there's some technical deficiency or technical infirmity with the order, i.e., some language you perceive that deviates from the way I ruled. But that is not an invitation to seek rehearing or reargue any of the aspect of the ruling. Your forum in which to do that is, should you choose to pursue it, the Court of Appeals. But if there is some technical deficiency here, I'm happy to hear that. But I need a letter by 3 o'clock.

MR. AGOSTINO: Yes. No, I will do that.

Just as a logistical matter, I haven't read your -- how many days do I have to get Mr. Mellon to come to the country? And obviously to the extent we need assistance --

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1 THE COURT: The order does not discuss him coming to
2 the country. It directs compliance with the U.S. petition.
3 OK. I mean, Mr. Lillywhite, the order enforces the summons. I
4 think it's beyond my pay grade to schedule the testimony.

5 MR. AGOSTINO: Location here. Obviously we're asking
6 him to travel to the United States.

7 THE COURT: Mr. Lillywhite, while it's beyond the
8 scope of what I was asked to rule upon, I'm happy for you to
9 address it because it would be worthwhile for you to arrange
10 this among yourselves while we're here on the record. Do you
11 want to address the question that Mr. Agostino just raised?

12 MR. LILLYWHITE: Sure, your Honor. So the summons
13 requires that Mr. Mellon appear at the IRS office in New York
14 City. If Mr. Mellon is not presently in the country, the
15 government would certainly be happy to work --

16 MR. AGOSTINO: Yes.

17 THE COURT: Speak into the microphone.

18 MR. LILLYWHITE: Sorry. The government would
19 certainly be willing to work with Mr. Mellon's counsel and hear
20 about his schedule when he next plans to come to the country,
21 and if it's within a short-enough period of time, we're happy
22 to try to schedule the appearance in accordance with the
23 summons at that time.

24 THE COURT: Well, look, Mr. Agostino, let me put it as
25 bluntly as I can. He is ordered to comply with the summons.

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1 If you, by negotiation with the government, modify the date,
2 for example, if the government is willing to move the date
3 later in order to accommodate travel plans of Mr. Mellon's, the
4 Court is not going to get in the way of that, but short of an
5 agreement with the government, the date of the summons applies.

6 OK. We stand adjourned. Thank you.

7 MR. AGOSTINO: Thank you.

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